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Constitutional session, New York State...1915

Albany

1915

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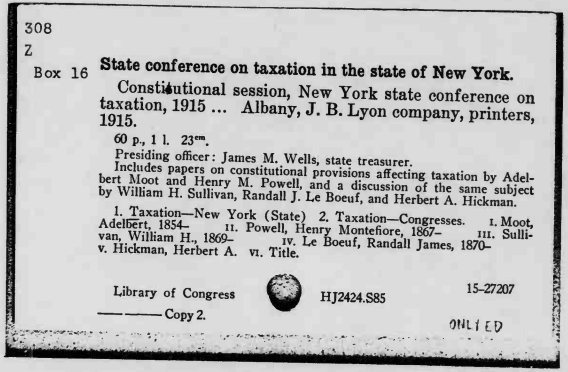

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CONSTITUTIONAL SESSION

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Box 6

New York State Conference on Taxation

1915

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FROM
A. E. HOLCOMB
15 Dey Street
NEW YORK CITY

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CONSTITUTIONAL PROVISIONS AFFECTING TAXATION

CHAIRMAN SCHWAB: On the occasion of the opening of this interesting session, it gives me great pleasure to invite the Hon. James M. Wells, Treasurer of the State of New York, to preside over our deliberations. Gentlemen, Mr. Wells.

MR. WELLS: Gentlemen, I appreciate very highly the honor of being asked to preside over this important session. It is not my purpose to detain you with any address of my own, but to proceed at once with the program of the morning. Your president has referred to the importance of the discussion this morning, owing to the fact that in a short time the constitutional convention will assemble in this city. So, the subjects at this session, dealing as they do with the consideration of constitutional changes — limitations, mandates and exemption, are vastly important.

The first paper on the subject was to have been read by Mr. Adelbert Moot, former president of the State Bar Association. Mr. Moot is regrettedly absent, and I understand that Mr. Alfred E. Holcomb will read the address of Mr. Moot.

Gentlemen of the Conference, Mr. Holcomb.

MR. HOLCOMB: *Mr. Chairman and Gentlemen.*— I am sure you will all be as disappointed as I am to be deprived of the company of Mr. Moot, and the pleasure of hearing him read his own paper. You know him as one of our most prominent citizens, a splendid friend and fine lawyer. It is kind of him, indeed, to write this paper at a time when he is so occupied and with so many things. The State Bar Association convenes at Buffalo to-morrow, and naturally he is compelled to be there to-day on account of the preparations. The title of his paper is "Constitutional Changes — Limitations, Mandates and Exemptions."

CONSTITUTIONAL PROVISIONS

Limitations, Mandates and Exemptions

By ADELBERT MOOT, ESQ.,

Ex-President New York State Bar Association

The first great constitutional limitation upon taxes is a limitation upon all government, and in that sense only is a constitutional limitation. In other words, whether we have an unwritten constitution, so called, like that of Great Britain, or a written constitution, like the written constitutions of our nation and our various states, the great constitutional limitation upon taxes is, after all, the man behind the government. In Great Britain the man behind the government, the the voter who makes the government, speaking by a majority, approves or disapproves of certain forms of taxation. The struggle over these questions of taxation may become so strong and keen that it will almost lead to a governmental revolution, as it did recently in Great Britain. When Mr. Lloyd George, as Chancellor of the Exchequer, proposed a land tax that would place a heavy burden upon the shoulders of all the wealthy landholders of the kingdom, these wealthy gentlemen, whose landed estates for centuries had been almost or quite exempt from taxation, felt greatly outraged that landed property which had been deemed almost sacred. and, therefore, a proper subject for almost complete exemption, should be subjected to heavy burdens of taxation. They at once pointed out that beautiful estates that were in reality great parks kept open to the public and enjoyed by the public, because their proprietors could maintain them and keep them open for such enjoyment because they were virtually exempt from taxation, would soon be forced upon the market, put up, sold, altered, destroyed, and thus the masses would be deprived of these great parks and the great beauty of many parts of England and other parts of Great Britain would disappear. There was strength in this argument, and yet it did not prevail against the stronger argument in favor of making virtually exempt landed property carry its fair share of the burden of taxation. The membership of the House of Lords owned

this landed property to a very large extent, and thus it was that the Premier of Great Britain was compelled to announce that the House of Lords had to choose between consenting to such taxation, or the House of Lords itself might necessarily disappear, because it had become an obstacle to such necessary reform in taxation. Of course other questions were more or less involved, such as that of Home Rule in Ireland, but we all know that the struggle has finally ended by the House of Lords retaining only a modified veto upon the legislation of the Commons. In other words, if the House of Lords practically vetoed the legislation of the Commons, that has ended the subject for more than a century heretofore, but now, after the House of Lords has twice vetoed such proposed legislation, the House of Commons may once more pass the proposed act, and then the House of Lords is powerless to veto such legislation any longer; and, as the Sovereign of Great Britain has not dared to veto legislation for nearly two centuries, it follows that the House of Commons, as the representative of the people, can authorize any scheme of taxation whatever that can survive two vetoes of the House of Lords.

At first, it may look as if tax reform was at the mercy of the House of Commons, under such circumstances, and yet where the House of Lords can thus veto proposed legislation, the resulting check upon proposed legislation, the resulting public discussion, the resulting delay, the resulting public opinion, will ultimately show that the House of Commons is wrong in what it proposes, and will compel the House of Commons to recede, or it will show that the House of Lords is in error in its vetoes, and the House of Lords will be compelled to recede, as it was recently compelled to recede in the matter of land taxation, and as it has been compelled to see Home Rule in Ireland prevail in legislation, in spite of its strenuous opposition.

I call attention to these well known recent illustrations, to show that after all the great limitation upon taxation is not in written constitutional provision, but is, instead, public consideration, public discussion, public opinion, and the resulting changes which they can bring about in any scheme of taxation. If some particular scheme of taxation is imbedded in

a written constitution, or is supported by a written constitution, an attack upon that provision of the constitution, followed by intelligent public discussion, will sooner or later force that provision of the constitution to the wall; will result in its amendment, or its removal from the field of discussion, just as the Income Tax and decisions under the Income Tax have finally forced an amendment to the Constitution of the United States, so that the Federal government is now at liberty to impose an income tax, although in fact that income tax rests most heavily upon the people of a wealthy state, or a wealthy city, and so lightly upon the people of some agricultural states that it is hardly felt at all by those states.

In our own State we saw the effect of such discussion of a constitutional provision when our Court of Appeals held in the Ives case that the Constitution of the State stood in the way of an act of the Legislature that would give workmen's compensation to those engaged in hazardous employments, whereupon public discussion and public attack forced an amendment to our Constitution within two years, and the Legislature thereupon immediately passed a very much broader and a very much more drastic workmen's compensation act to take the place of the act that was held unconstitutional in the Ives case.

And so it is as to any Federal or State provision of a written constitution authorizing or preventing some particular scheme of taxation. If such provision of the constitution is unwise or unjust for some reason, sooner or later it is sure to be attacked, and within two years from the time of that attack any such provision of the constitution can be removed or amended if the people are sufficiently united in the demand for its removal or amendment, to constitute a plain majority of the people supporting such removal or amendment.

These considerations show that the provisions of written constitutions should be fair and just and general, and should not go into too much detail, or undertake too great a limitation upon the power of the people in any given direction. The people change their views of government, and their views of

what it is right and wrong for government to do. When our Federal government was organized, the people of this country, like the people of foreign countries, thought lotteries very proper things for the government to authorize, and the sale of lottery tickets entirely proper to enable State or Federal governments to raise money to build capitols, or to carry out other public purposes. In many countries of Europe this view of lotteries is still thought to be the correct view, and, therefore, this practice of government still continues, but long, long ago in this State and other states a different view of the right and wrong of lotteries came to prevail, and constitutional limitations and Federal legislation have eliminated lotteries as vicious methods for obtaining the money of the people, virtually indirectly taxing the people for government purposes.

So to-day an immense amount of the revenue of this State is obtained from liquor licenses; in other words, liquor taxes; although the people recognize the great harm of liquor selling to such an extent that the law authorizes local option, and public opinion decides in favor of dry towns instead of liquor towns in a majority of the cases at the present day. Doubtless along the same lines a changing public opinion of right and wrong will give local option to various parts of cities, so that saloons will not be able to intrude themselves upon the residential parts of cities, and thus more and more the right to local self government will exclude liquor selling. Along this line of gradual advance, it may be, when the people are ready for it, that local prohibition will ultimately become State prohibition, or even National prohibition, even though such prohibition will destroy a large revenue now obtained by such indirect license taxes upon our consumers of liquor. It would be unfortunate, of course, to undertake anything of this kind until public opinion, as the result of public discussion, and a change of public sentiment on the subject, is thoroughly ready for it, for, manifestly, prohibition cannot be enforced, whether it is put in the constitution or not, so long as 90 per cent of mankind drink more or less liquor, in spite of its known bad effects upon them.

The fact is, that in making constitutions, quite as much

as in making laws, American people must learn that you cannot change the habits, or the thinking, or the customs, of a people over night. You cannot make people moral or wise by constitutions or statutes. The most you can do is to put the deliberate judgment of a sufficient majority into constitutions or statutes that shall be enforced against wrongdoers, when the prevailing moral and general opinion of the community has reached the conclusion that what once was considered as right is in fact wrong, or unwise, or contrary to the public weal, and, therefore, is no longer to be tolerated, or even permitted by law.

It is well to remember, too, that our forefathers came to this country to enjoy a greater liberty; that self-government was a privilege and a joy to them; that they took the keenest interest in developing commonwealths where forests stood, that they had to create their wealth, and, therefore, they were economical in their government and they taxed themselves as little as possible to support their own government. One hundred and fifty years of such liberty, such self-government, such comparative freedom from taxation, developed an attitude toward taxation that very naturally coupled representation and taxation, and preferred revolution and independence to submission, even to the light stamp taxes which Parliament assumed to impose upon them without their representation or consent. Our national independence, and our freedom from foreign domination, were the result of most efficient self-government here, and resistance here to taxes imposed from abroad without our consent. Naturally, governments, State and National, that came into existence as independent governments in this way, as the result of a struggle over taxation, were keen upon questions of taxation, and will show some wisdom in their constitutions and laws.

Let us remember, too, that the National Constitution, which replaced the old articles of confederation, was due largely to the attempts of the various States to levy taxes upon property or business of an interstate character.

Having all this in mind, let us observe, first, the grants and limitations of the Federal Constitution upon the question of taxation.

The very first provision of the Constitution as to the power of Congress is that Congress shall have the power "to lay and collect taxes, duties, imposts and excises." This broad grant of power, however, is granted with the suggestion that it is to be used to pay debts and provide for the common welfare and defense, and then follows a most important limitation, to-wit: "But all duties, imposts and excises shall be uniform throughout the United States."

Later in the Constitution we find another limitation, to-wit: "No capitation or other direct tax shall be paid unless in proportion to the census;" and this language produced the trouble in the income taxes some years ago, that resulted in the Court pronouncing those taxes unconstitutional because they were not so laid, whereupon we have recently added the Sixteenth Amendment to our Federal Constitution, which provides that such taxes may be laid "without regard to any census." Our citizens do not seem to understand as they should that this amendment in our Constitution permits Congress to so levy an income tax that it is uniform, in the sense that it is the same tax per dollar everywhere, but Congress is no longer required to so read it that it shall be apportioned among the various States in proportion to the population of those states as disclosed by the census.

Another limitation of our Federal Constitution is that Congress shall not have the power to levy a tax or duty upon "articles exported from any State." Naturally, also, the Federal Constitution took from the States the power to levy any imposts or duties upon imports or exports of their citizens, or duties upon tonnage, without the consent of Congress.

Considering how much the matter of taxation from abroad, and taxation by the various States upon business or property moving from one State to the other had to do with bringing into existence our Federal Constitution, it is impressive that such great taxing power was given to Congress, and so few limitations were made upon the exercise of that power.

The power of the Federal Government to tax anything and everything is so great, notwithstanding these limitations, that one of our wisest Judges has said that it might be used as a power to destroy. Indeed, it has been used as a power to

destroy. In effect, state banks were destroyed during the Civil War by the tax imposed upon issues of currency by them, and thus National banks largely took their place and became buyers of the Government bonds to secure their circulation, and thus the Government received large sums from the sale of its own bonds to its own banks with which to maintain the Civil War.

Later still, when our farmers found that oleomargarine could be manufactured and sold at a price that would cause it to be generally used as a substitute for their more expensive butter, they induced the Federal government to put such a tax upon oleomargarine as practically to destroy its manufacture, notwithstanding the fact that it was a scientific and healthful substitute for butter.

In like manner, again and again in making our tariffs we have placed such a high tax upon imports as to destroy the business of the importer, for the very purpose of encouraging capitalists at home to invest large sums of money in domestic manufactures. A notable illustration of this sort of taxation was when we fixed a high tax upon all imports of sheet tin, and everything of the kind, so as to substitute a domestic manufacture of the same thing in place of the manufactured sheet tin previously received from Wales.

Viewed as tax measures, such high taxes for such purposes are not defensible, but many contend the development of domestic manufactures in this country show them to be defensible for other than tax reasons. Whether defensible or not, they show how great is the power of our Government to tax, to tax directly or indirectly, food, clothes, everything, whether it be property itself, or income derived from our earnings, or our property. It is not the limitations of our National Constitution that save us from taxation, but it is good sense in the people who govern us. The history of our nation is full of illustrations of the fact that we are too slow to consider questions of taxation as of much consequence. When politicians were anxious to get the soldier vote of more than a million soldiers who had served upon the right side in the Civil War, and pension agents were anxious to be paid for getting pensions for these soldiers, pension laws were passed

increasing our burden of taxation beyond anything ever dreamed of by the soldiers themselves, or by soldiers of any other country, and thus the country has paid billions of dollars for pensions that would not have been paid by any other country on earth; that should not have been paid by this country, in the judgment of the ablest and most patriotic soldiers themselves, until our soldiers had reached such a period of life as to make proper pensions necessary to those who had become aged.

In like manner, politicians in Congress, desirous of returning to Congress, have been in the habit of getting appropriations for harbors, or creeks, or public buildings, in their districts, into the appropriation bills, by a process of log-rolling with each other, upon the theory that thus they would obtain favor with constituents and be returned again to Congress. In this way we have seen annual appropriation bills for the rivers and harbors alone amounting above the fifty million dollar mark that was once thought the very limit for such bills, and only last year we saw a sturdy senator who understood the merits of this question battle with the Senate until a bill for more than $50,000,000 was cut down to one for $20,000,000, with the approval of the country. Nearly every other country has a budget, and we ought to have a budget, so that our appropriations will be made upon merit, and yet, despite the support of presidents and statesmen, the politicians have been sufficiently numerous and hungry to keep in use the old log-rolling method of making appropriations which must be satisfied from taxes, and to prevent the scientific budget method of making appropriations from coming into use.

When the Spanish war tax imposed a progressive tax upon inheritances, among other things, our Supreme Court startled us by holding, in substance, that it was within the power of Government to impose almost any tax upon inheritances, but fortunately that particular National law was soon repealed, thus leaving inheritances only subject to State taxes at present.

Our National government shows us plainly enough, therefore, that constitutional limitations are not the real limitations upon taxation. The real limitations upon taxation are

the interest of able, fair-minded, patriotic men in government, and economical business methods in government. This is as plainly seen in the constitutional limitations and the methods of taxation employed in the State of New York.

Our first constitution, adopted in April, 1777, vested the supreme legislative authority in the Legislature, and is notable for its silence upon the subject of taxation, or of any limitation upon the power of the Legislature in that regard. The reason for this is very apparent; for in those days the people who took such an active interest in their own self-government and who were so economical and sensible about that government, could not imagine that it was necessary to place limitations upon their legislature in the matter of taxation to support the government. Slight amendments were adopted to this Constitution in 1801, but experience has not yet suggested the necessity of limitations upon the power of taxation. In 1821, the Constitution was changed in many important particulars, but still the supreme legislative power remained in the Legislature, and while limitations were placed upon it in many respects, we look in vain for any article limiting its power in matters of taxation, except that it could no longer authorize lotteries. Clearly, experience had not yet shown the necessity for limitations upon the power of taxation.

Our next constitution was adopted in 1846, and that constitution still gave the supreme legislative power to the Legislature. It, however, added other limitations to that power, but they are general limitations, that fail to touch the subject of taxation, except by provisions for a canal sinking fund, canal revenues, deficiencies in canal revenues, and provisions that the State may contract a debt not to exceed a million dollars, in case of a deficiency in revenue, and this general limitation as to taxes:

> "Section 13. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object."

The reason why we find so little in our constitution as to taxation down to this time is found in the fact that the Government was so wisely and economically administered. The best authorities agree that from 1789 until 1842, New York was generally able to dispense with direct taxation for state purposes; that she only levied state taxes during fourteen years in that period of time. After 1842 a state tax was regularly laid, but the rates were low, and until 1855 averaged less than one mill on a dollar of the valuation, the valuation also being low.

After 1855, there was an increase, which grew rapidly during the Civil War, for obvious reasons. Until recent years, however, New York had a very small state debt, and its government was economically administered in the main. While Governor Hill was not altogether admirable as a politician, he was a very economical Governor, and the same may be said of his predecessor, Governor Cleveland, and many other Governors before him.

In recent years, however, an enormous increase in paid commissions, and unnecessary offices, under a complicated, partisan, and expensive election law, that is making our elections cost the State at least $500,000 a year more than they should, and many like facts, have made our State government extravagantly, wastefully, expensive, and the result has been that the tax-payers have been subjected to heavy taxation. Villages, cities, and the State alike have been rushed into debt, to the constitutional limit. Worse still, the money borrowed to build highways, for instance, has been so unwisely expended in many cases, under the supervision of politicians, that expert engineers of the highest character tell me that twenty or twenty-five per cent of it in recent years has been wasted, some of it being literally stolen, although I am glad to learn, on high authority, this is no longer true of our Highway department.

This is not the first time that this tendency to municipal extravagance and debt has manifested itself in our State. One of our most important constitutional limitations grew out of this extravagant and wasteful tendency more than

forty years ago, when nearly every town wanted to aid railroads. The result was, a constitutional amendment was adopted, which provided:

> "Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking."

At the same time another constitutional amendment was adopted which provided:

> "No county, city, town or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual association or corporation."

In 1884, these limitations were further strengthened by an amendment which provided:

> "No county containing a city of over one hundred thousand inhabitants, or any such city, shall be allowed to become indebted for any purpose, or in any manner, to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation."

The foregoing limitations upon indebtedness are necessarily limitations that prevent taxation; therefore they are the very best kind of constitutional limitations upon taxation.

These limitations upon indebtedness stopped the extravagant and wasteful incurring of debts, and did more than any other provisions of our constitution to teach our citizens self restraint and compel them to exercise foresight and judgment in incurring indebtedness or undertaking public works.

In 1909, the 10 per cent limitation upon indebtedness was amended so as not to prevent the issuing of certificates of indebtedness or revenue bonds in anticipation of the collection of taxes for the year when such certificates or bonds are issued; also so as to permit the bonds issued to provide a supply of water, to exceed the 10 per cent limitation, provided

a sinking fund is created to redeem such excess of bonds within twenty years.

So, too, it was amended so as to permit the City of New York to consider its public improvements, like the subways, as assets, where they yield current net revenue, and the city is authorized to provide for a slow cancellation of such debts for public improvements by a sinking fund.

Another very important preventative provision of the Constitution is that which provides that the property of the State, or its public money, shall not be used, directly or indirectly, in aid of the maintenance of schools or institutions:

> "wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught."

Other preventive limitations are those which prevent the compensation of public officers from being increased, prevent public officers from auditing debts that have outlawed, and prevent the Legislature from auditing claims against the State.

The limitations upon bribery also strike directly at an old vice, because before these limitations came in, first by statute and then by constitutional amendment, it was not a crime to bribe a member of the Legislature to pass a bill to pay out the public money on a claim against the State, no matter how fraudulent or vicious that claim might be; for so our Court of Appeals was compelled to hold nearly forty years ago, in the celebrated Lord case.

Here then we have the principal preventative and direct limitations upon taxation in this State. It will be observed that they leave the Legislature with ample power to authorize direct or indirect taxation, to tax one class of property 8 per cent and another class of property one-half of one per cent; to tax one class of property one-half of one per cent a year, and to tax another class of property one-half of one per cent for fifty or one hundred years. In form, the Legislature is left free to provide for exemption from taxation as to particular classes of property, and it has provided for exemption as to particular classes of property.

For instance, all church property is exempt from taxation, and the result is that about two billion dollars worth of valuable real estate in this State is owned by various churches and is not subject to any general tax whatever. Such exemptions are contrary to the spirit of our institutions, because we have so many churches of so many different faiths that do not see religious questions alike, the State for more than a century has tried to stand impartial and aloof from all religious denominations. As we have seen, by constitutional limitation it has tried to keep public property and public money from being used in any way, directly or indirectly, to teach religion in either private or public schools. It leaves the home, the Sunday school, and the church to teach any religious belief that is entertained by such home, school or church. No observing person can doubt that the success of our State and National governments is in part due to this policy of separating the State from all religions whatever.

But when the State exempts valuable church property from taxation, it, in effect, presents a yearly bonus of just so many hundreds of thousands of dollars to that particular church which is free from taxation. Undoubtedly churches are a good thing and are to be sustained, but they are like many a good thing in the home that is to be sustained. The churches. should be sustained from the private funds of the people who belong to them, just as homes should be sustained by the people who receive their benefits. There are even stronger arguments in favor of exempting homes from taxation than there are for exempting churches from taxation, and sooner or later this will be understood, and churches will no longer be exempt from taxation.

The exemption of personal property from taxation is a very large subject. Beyond doubt, this State has an enormous amount of personal property that pays little or no tax. Some of our wealthy inhabitants have removed themselves to Great Britain, others to France, others to Switzerland, others to New Jersey, others to New England, others maintain residences in southern or western states, where they are seen for a few weeks once a year, and by such artifices people who have many homes in many states or countries escape taxation upon their personal property in very large measure. The

Federal income tax undertakes to reach and tax these incomes, even where the people are living abroad, but so far, in spite of the ingenious provisions of the income tax law, it is said that this attempt has not been altogether successful.

On the other hand, some states, like Ohio, for instance, have drastic provisions for taxing personal property, and recently we have seen that a very wealthy man had permanently removed to this State to escape such taxation in Ohio.

One of the greatest authorities on taxation who ever lived or wrote upon the subject doubted the wisdom of any attempt to tax personal property, that could be carried away so easily by the owner, so as to remove it from taxation.

This State, however has not acted upon this theory. In form, it has always undertaken to tax personal property, but in fact it has largely exempted a very large part of the most valuable personal property within it.

In taxing secured debts only one-half of one per cent for all time, no matter if they have one hundred years to run, this State has created an exemption that cannot be defended upon principle. Either such secured debts should not be taxed at all, because it is so easy to remove them from the State, or they should be fairly taxed. Of course the State has the constitutional right to exempt such debts from future taxation, because the State now has the constitutional power to make a contract exempting property from future taxation. But this power has not yet been exercised in this case, since the very next Legislature may repeal or amend such a law, and may substitute a tax of one-half of one per cent a year in the place of a tax of one-half of one per cent for all time, or one hundred years. Of course the power to make a binding contract to virtually exempt some particular kind of property from future taxation should no longer be given our Legislature. It should be denied that power hereafter.

The State having made a law to give exemption from taxation for one-half of one per cent for the full time a secured bond has to run, it may be that it would not be good faith on the part of the State to repeal or amend such a law and substitute for it a law imposing one-half of one per cent for every single year the bond has to run, but there is a broad difference between the good faith of the State and the constitu-

tional power of the State to thus change its tax laws, and make things exempt to-day that shall be taxable to-morrow, unless the State has bound itself by a contract not to do so, which it may not impair under the Federal constitution.

The State undertook to impose a tax of one-half of one per cent a year upon mortgages on real estate years ago, but it was at once found that borrowers upon mortgage were compelled to pay this additional one-half per cent. and, therefore, that the borrower paid the tax upon his real estate, and then really paid a second tax upon that part of it represented by the bond and mortgage held by his grantee. The result was that the Legislature modified the law by making it a tax of one-half per cent upon the mortgage debt to be paid at the time the mortgage debt is created, and in truth it seems that now in a large proportion of the cases the owner of a mortgage really pays this mortgage tax. Of course the owner of this mortgage also has to pay his income tax, if he has income enough to be taxed, so that he again has to pay some tax upon the mortgage income.

So, too, the argument in favor of the tax of one-half of one per cent upon a secured debt, even if it runs one hundred years. is that such a light tax draws capital to this State, makes this State the great banking center of the country, and, therefore, what the State thus obtains when the secured debt is created is something that it could not obtain, because the secured debt would be created elsewhere, were it not that this light tax induces its creation in the State of New York.

Considerations of this sort, having to do with the billions of dollars of secured debts of great railway and industrial corporations, are the considerations that it is claimed induced the Legislature to make this secured debt exemption. But tax experts generally condemn that exemption as illogical, and unjust to other taxpayers.

The truth is that these matters of taxation have not been dealt with by experts in this State, as a rule, and, therefore, the tax laws of this State constitute anything but a logical or just system of taxation.

The more we look at constitutional limitations, also, the more we see how futile they often are, the more we are convinced that the real remedy for tax absurdities is not a constitutional limitation, but is an interested people, who are bound to have efficient, economical government, and bound to keep their taxes down. This is why all taxes should be direct, that people may know what they are, may feel their burdens, and may be compelled to take an interest in government to keep their taxes down.

It is because the people believe that commission government will give them more efficiency and economy that so many cities have adopted the commission form of government in recent years, and certainly in some cases it appears to have been demonstrated that the commission form of government is a remedy for excessive city taxation. It is because the people are interested, that the commission manager form of government is beginning to appear in cities, and while that form of government is quite new, enough has already been done in a few places to indicate this form of city government, in substance not altogether unlike the government of many German cities, will result in as much efficiency and economy as the German cities have obtained with their city governments.

And now we are asking for the short ballot for the State, the city, the village and the town, because we believe, if our attention is not distracted, but, instead, is centered upon a few individuals, and responsibility, also, is centered upon them, they will give us an efficient, economical, responsible government, and will make an honest endeavor to keep the taxes as low as they can be kept and give us what government should give the people.

It is quite true, too, that the Governor of the State, however strong a man he may be, is quite powerless oftentimes in dealing with the various departments of the State government, and for that reason it is proposed that a large number of the elective State offices shall be made appointive State offices, that the Governor may have greater power to bring about economy and efficiency in government, may have as great power to bring about economy and efficiency in State government as the President has in the National government.

If some such change shall be made, and we shall also adopt an up-to-date scientific budget plan of government, we will go

a long way to prevent high taxes, to make people take an interest in their government, and ultimately we may hope, through a commission of tax experts, New York may give us a fair and up-to-date scheme of State taxation. But whether we get this revision of our tax laws sooner or later, do not let us lose faith in the people. They are wiser than we may think in many matters.

For instance, notwithstanding all the inducements to do otherwise, our people have kept their heads and have not burdened us with great armies and great navies, in the chase for glory. They do not care to pay hundreds of millions of taxes to get ready for needless and wicked wars. And let us hope, under the leadership of statesmen of common sense, that common sense and love of our neighbors will continue to rule the day. Of course we must have some army and navy, but such a plan as that of Switzerland may be employed, whereby we will have a sufficient trained force to defend us if necessary, but will never have a great standing army, or an overgrown, burdensome navy.

In State matters, in looking over the debates and constitutional provisions of other states, I have found no constitutional provision that seems to me better planned or drawn than that of that up-to-date state, Wisconsin, a state without a public debt, despite all it does for its people; a state from which we may learn many lessons.

Probably tax experts are right in condemning the old general, uniform property tax as no longer fitted to the uses of a very complicated business world. But it does not follow that Henry George was right in his eloquent plea for resting all taxes upon the land alone. The single-taxers who follow his lead must yet do a great deal of preaching before they will have a majority in this State, or most states, in favor of their scheme of taxation. After all, therefore, in the classified property taxes now imperfectly developed and applied in this State we have most hope of success, especially if a commission of tax experts shall revise and codify our tax laws.

But we should not attempt to force any one of these tax systems upon our people for all time by putting it into the constitution. Instead, let us hang to our slowly developed

and sensible constitutional limitations upon debts, upon private claims, upon bribery, and all the rest of preventive measures that keep down the burden of taxation. I really think the tax experts are right when they say the only additional constitutional limitation upon taxation we need is one that shall read:

> "The power of taxation shall never be surrendered, suspended, or contracted away. All taxes shall be uniform upon the same class of property, and shall be levied and collected for public purposes only."
>
> "Upon reflection, however, to cover the home rule point that might be made upon the basis of the great opinion of Vann J., in *People* v. *Tax Commissioners*, 174 N. Y. 434, 435, we might find it wise to add this sentence: 'A State tax commission may be given the power to re-assess any property.'"

Mr. Wells: I presume this paper will be discussed after the next paper has been read. I now have the pleasure of presenting to you Henry M. Powell, Esq. Mr. Powell is a well known lawyer of the city of New York, a public spirited citizen, who has devoted much time to public matters and especially to the consideration of the subject upon which he will address you.

Mr. Powell: *Mr. Chairman and Gentlemen of the Conference.*— I trust that the very flattering introduction of the chairman will not prejudice you against me, for it is with considerable diffidence that I appear upon this platform, and I beg your indulgence for my shortcomings and for the errors in this paper, which I am sure will not be few. The subject of my paper is the same as that of Mr. Adelbert Moot, and I trust you will pardon me if I have to go over the same ground. It is very difficult to prepare a paper of this sort on short notice without the co-operation of your associate and avoid going over the same ground, to a very large extent.

I shall start off with a definition, because I think it well that we should have some idea of our subject in the shape of a definition before we can understand it properly.

CONSTITUTIONAL CHANGES — LIMITATIONS, MANDATES AND EXEMPTIONS

By Henry M. Powell,

Author of "Taxation of Corporations;" Counsel to the Special Tax Commission of 1906; former New York Assistant Corporation Counsel

For the purpose of definition, a limitation on taxation is a restriction, either expressed or implied, upon a government's taxing power created by the constitution or organic law of the State. Exemptions are positive grants of freedom from taxation for a certain period, or indefinitely.

Limitations

It was Chief Justice Marshall who said that the power to tax also implied the power to destroy, and it was evidently with the knowledge of this vast power that we find limitations upon taxation from a very early period. As early as the time of the signing of the Magna Charta, we find that a restriction was placed on the King's power of raising money so that no scutage or aid could be imposed but by the Common Council of the realm, except for the King's ransom, for making the King's eldest son a knight and for marrying the King's eldest daughter. Later, in the Bill of Rights, we find expressed the denial of the right of the Sovereign to levy taxes without the consent of Parliament, or to exert the suspending or dispensing power. Our Federal constitution is full of limitations on the government's taxing power, while those of the thirteen original states are generally free from them.

The reason that the early state constitutions are free from limitations on taxation, is that they were originally based on colonial charters obtained from the King, for the most part, during the period of the absolute monarchy. The only check on their power of taxation was the royal authority. When independence was declared in 1776, the Continental Congress recommended to the various commonwealths that they

reorganize the local governments on the basis of the greatest amount of political freedom. They accordingly proceeded to readjust their colonial charters and convert them into State constitutions by striking out all reference to the authority of the King wherever it occurred, and this included the King's power over taxation. In the second place, when the Constitution of 1789 was framed, the thirteen original states had already adopted State constitutions in which they preempted all the rights of taxation which the National government might exercise, and in framing the new Constitution of the United States, the delegates from the respective states, fearing that the new National government might trespass upon the domain of local self government, limited the Federal government's taxing powers, only restraining the state's power of taxation to the extent of the necessary national and international powers of the new government. For example, a state might not impose a tax on imports and exports, that being within the exclusive authority of the United States; the states might not interfere with interstate commerce, that being a national power; but on the other hand, the United States, under the Constitution of 1789, could not impose an income tax or a capitation tax, or a tax on real estate, except according to population. Neither could the National government impose a tax on articles exported from any state. All duties, imposts and excises must be uniform, and all revenue producing measures must originate in the popular branch of the National legislature.

I have intimated with respect to the states, that there are few restrictions on taxation in our New York Constitution, and there are only a very few provisions of our State Constitution that have any bearing on the question of taxation.

Article 3, section 18 of our Constitution provides:

> "That the legislature shall not pass a private or local bill in any of the following cases, granting to any person, association, firm or corporation, an exemption from taxation on real or personal property."

This was a most salutary provision, but, as I will point out to you later, persons, associations and corporations have been

enabled to take advantage of our very liberal General Laws to secure exemption.

Another section of the Constitution that has given us little trouble in the past, but may give us some in the future, is article 8, section 10, limiting the debt of counties and cities to 10 per cent of the assessed value of the real estate, and under the same section, the City of New York may not impose a tax of more than 2 per cent on the assessed valuation of the real and personal property, exclusive of the amount providing for principal and interest of the existing debt. We are approaching very near that limit, and in 1909, we were obliged to amend this section so that it might not apply to bonds issued to pay for building the New York subway.

The So-called "Home Rule" Provision

A provision in the State Constitution that has given the courts some concern, and that on its face does not appear to have any direct bearing on taxation, is what is known as "The Home Rule Provision," which reads as follows:

> "Article 10, section 2. All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors or other county officers as the legislature shall direct. All city, town and village officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct."

This provision was in 1903 invoked in *People ex rel. Metropolitan Street Railway Company* v. *Tax Commissioners,* 174 N. Y. 417, where the constitutional right of the Legislature to pass the Special Franchise Tax was involved.

The point was raised that as the special franchise tax law was required to be assessed by the State Tax Commissioners appointed by the Governor, this was taking away from the local tax assessors the right of valuation, since they were constitutional officers under this provision.

The Court of Appeals on broad lines, very wisely decided that the Special Franchise Tax Act was constitutional, and that the State Tax Commission had power to assess special franchises. In his opinion, Judge Vann of that Court said:

> "The entire taxing power belongs to the legislature and not a dollar can be raised for local or general purposes, to carry on self-government in localities or in the state, or to provide for the public safety, order or health except by its authority. This supreme power should be considered in connection with the home rule provision of the constitution, and neither should be construed as to embarrass or cripple the other. Home rule, as understood and practiced in the past, giving to localities the right to govern themselves, but not to hamper the government of the state, should be carefully protected from open attack or indirect invasion. Shadows, however, should give way to substance, and the right to create a new system of taxation and bring in property of a new character, hitherto untaxed, with some other property incidental thereto and worthless without it, cannot, as we think, be denied upon principle and should not be withheld from the legislature unless required by some controlling decision of the court."

The same provision as that contained in our New York Constitution, in article 10, has been embodied in the Wisconsin Constitution, and its interpretation came before the Wisconsin Supreme Court in the case of *State ex rel. Daniels* v. *Hussey,* 143 Wisc. 649. In that case there was involved the validity of an act of the Wisconsin Legislature which authorized a reassessment of the entire property of any town, city or village by the State Tax Commission, if it should be found that the original assessment had not been legally made, and public interest required a reassessment.

All the New York cases, including the special franchise tax case, were reviewed in the Daniel's suit, and the Court held that a reassessment by a State officer of an illegal assessment made by local officers, was no deprivation of home rule; that the persons appointed to make the reassessment were not officers, but merely agents required to perform a special function, and that the act was in accord with public policy and effective administration of the local laws.

It was evidently the intent of the framers of the early New York constitutions, all of which contained a provision similar to article X, to prevent centralization of power in this State, and to promote local self-government. While this was undoubtedly a very wise and beneficent measure, it seems to me that as far as taxation in the future is concerned, there will be a tendency towards centralization of administrative powers, and that this tendency will be in the direction of a more equitable and effective system of taxation. This tendency to centralization is what has been going on very recently in all the leading states in this country, and if there is something in the home rule provision of our Constitution which will retard the progress of a more equitable and effective system of taxation, it will be the part of wisdom for the Constitutional Convention to amend it in such a way so that assessors may, if necessary, be appointed by and responsible to some State authority, in such manner as the Legislature may direct. A slight change in the present phraseology of this section may save us needless embarrassment in the administration of our financial system, viz: At the end of the first and also at the end of the second paragraph of this section, the following, or words to this effect, be inserted:

> "or by such other authority or in such other manner as the legislature shall direct."

Exemptions

Property may be exempt from taxation in New York State:

1. Because of the Federal laws or Constitution.
2. Because the laws of the State may expressly exempt such property from taxation.

3. There may be no express exemption from taxation, but the property may escape taxation because not embraced within the definition of the words "real property" or "personal property" as defined in the tax law.
4. There may be no exemption from taxation, but the property may escape taxation because of the failure of the administrative machinery for its assessment or collection.

Exemptions by Reason of United States Constitution or Laws

First, as to exemptions by reason of the Federal laws or Constitution: Such exemptions are either expressly provided in the Federal Constitution or Law of Congress, or are necessarily implied from its provisions, thus the property of the United States, while expressly exempt under subdivision 1 of section 4 of the New York Tax Law, would necessarily be exempt under the United States Constitution. While patents, copyrights and imports are not subject to local taxation, they are not exempt from taxation under our State Franchise Tax, since it has been held by the Courts that the tax is not on the property itself, but the tax is based on the franchise or privilege which is included with the value of the patent or copyright and other property, in the capital stock of the corporation, and the tax is based on the whole property, irrespective of its character. For analagous reasons it has been held that a transfer tax applies to such property.

Property Exempt by the Laws of the State of New York

The general classes of property exempt under the laws of the State may be briefly grouped as follows:

1. Property of the United States.
2. Property of the State.
3. Property of municipal corporations.
4. Lands in any Indian reservation, when owned by the Indian tribe or nation.
5. All property exempt by law from execution.
6. Bonds of the State of New York.

7. Real property of a corporation or association organized exclusively for the moral or mental improvement of man or woman or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary. library patriotic, historical or cemetery purposes or for the enforcement of laws relating to children or animals and the personal property of such corporations. The exemption has also been extended recently to fraternal corporations created to maintain a building for meetings, or an asylum, home or school.

In addition to this we exempt the real property of volunteer firemen associations, agricultural societies, the real and personal property of clergymen, to the extent of $1,500, besides the dwelling house or lot on which it stands belonging to a religious corporation and occupied by clergymen, to the extent of $2,000. Further exemptions include domestic vessels, bonds, mortgages, accounts sent here for collection and money sent here by non-residents for investment. Goods and products of another state sent on consignment, savings bank deposits, accumulations of co-operative loan associations, and life insurance companies, the unearned premiums of fire, casualty or surety insurance companies, the personal property of a mutual life insurance company. The real property of a medical society a college of pharmacy and still a few others.

These exemptions now cover almost each and every institution or class of property which may alleviate the physical comfort, appease the moral hunger or add to the mental satisfaction of man from the cradle to the grave.

It should be remembered that these exemptions did not spring up over night, but were gradually created during a long period of years from the beginning of the State government down to date.

In the compilation of the Revised Statutes, published in 1829, we find the principal exemptions to be property of the United States, property of the State of New York, schools, colleges, places of public worship, court houses, jails, poor houses, libraries and property exempt from execution. The numerous exemptions which have since appeared were at that time unknown to our law.

Exemption of Fraternal Association Property

The patchwork method by which the exemptions contained in subdivision 7, section 4, of the Tax Law have been added, has created considerable diversity of opinion in the interpretation by the courts of the respective provisions that have been added from time to time. A very recent example of this is the exemption in favor of fraternal organizations maintaining an asylum, home or school. Under chapter 204 of the Laws of 1903 the following amendment was added to subdivision 7:

> "* * * and further provided that the real property of any fraternal corporation, association or body created to build and maintain a building or buildings for its meeting or meetings of the general assembly of its members, or subordinate bodies of such fraternity and for the accommodation of other fraternal bodies or associations, the entire net income of which real property is exclusively applied or to be used to build, furnish and maintain an asylum, or asylums, a home or homes, a school or schools for the free education or relief of the members of such fraternity or for the relief, support and care of worthy and indigent members of the fraternity, their wives, widows and orphans, shall be exempt from taxation."

The apparent intention of this amendment was to exempt a fraternal organization whose entire net income was applied to or used to build and maintain an asylum, home or school for the free education or relief of the members and their dependents. Under a decision of Judge Morschauser, Supreme Court, Special Term, Dutchess County, November 15, 1914, in *People ex rel. Trustees of Poughkeepsie Lodge, I. O. O. F.*, v. *Nevins*, it seems that the net income need not be applied or used to build and maintain such school, asylum, home, etc., as long as the net income is used for the relief of the brethren of the fraternity and their dependents, so that any building or even unimproved real property which a fraternal corporation owns, whether used for fraternal society purposes or not,

would be exempt from taxation provided its net income was applied to the relief of worthy and indigent members of the fraternity and their dependents. This decision, if affirmed, will be of far-reaching importance, as it will insure such corporations and associations an exemption from taxation, irrespective of the uses to which the buildings are put. This is an exemption broader in its terms than that enjoyed by any other class of corporations, not even excepting churches or hospitals.

Exemption Amendments After Litigation

Many of the exemption laws have been passed by the Legislature after the courts had disallowed the claim for immunity under the law as it formerly existed. For instance, after the Court of Appeals had decided in the *Pacific Mail Steamship Company* case, in 1876, that domestic vessels registered in the State were taxable even though the vessels themselves were outside of the State at the time of the assessment, an amendment was secured exempting registered vessels, which is now incorporated as subdivision 12, section 4, of the Tax Law.

After the decision in *People ex rel. National Surety Company* v. *Feitner* was rendered in 1901, holding that the premium reserves of insurance companies were not deductible for purposes of taxation, an amendment was secured to subdivision 14, section 4, of the Tax Law, exempting such premium reserve.

Statistics as to Exemptions

Reverting again to general exemptions of real estate, it has been estimated that out of approximately $11,000,000,000 of real property in the State of New York in 1913 nearly one-sixth of the total amount was exempt property.

It has also been said that exemptions seem to be growing faster than the assessed valuation of real estate. Figures and statistics furnished by the New York city tax department are perhaps the best record, and as at least 75 per cent in value of the exempt property is situated in that city, these figures will afford a fair comparison for the rest of the state.

In 1898 the total exempt property, including federal, state and city property, and the property of religious, hospital and charitable institutions, amounted to a little over $519,000,000. The total assessed value of real estate in 1898 was about $2,367,000,000, or, in other words, the exemptions were more than one-fifth of the total valuation.

In 1907 the total exemptions in the city of New York aggregated over $1,156,000,000 and the total assessed valuation was a little over $6,000,000,000. In 1913 the total exemptions were nearly $1,800,000,000 and the total assessed valuation was a little over $8,000,000,000, or a little more than 20 per cent.

It must be remembered, however, that the largest part of the exempt property is that owned by the city. Of the $1,800,000,000 of exempt property in 1913, over $1,355,000,000 consisted of city property, and about one-half of this last amount consisted of public parks and playgrounds. The Federal property consisted of nearly $66,000,000. The State property not quite $4,000,000. Of the total exempt property in the City of New York, $371,000,000 belonged to religious institutions, asylums, hospitals, private colleges, schools, cemeteries, and to other private corporations. There is no power under our State Constitution to tax property of the Federal government, and to tax the State or city government on its property would simply be taking it out of one pocket and putting it into another. Therefore our efforts in limiting exemptions must be directed to the private exemptions under general laws, and the question arises: "What is the best method to be adopted?" It has been suggested that exemptions of private property under general laws should be only for limited periods of five, ten or twenty years, and that applicants for such exemptions should then apply for a renewal thereof. It has also been suggested that this class of exempt property should be taxed at a lower rate than other real estate, and that this would ease the general burden. A prudent suggestion, and one that would disturb existing conditions less than the others, is that in the future when property is withdrawn from taxation in the various localities of

the State under the general laws enumerated it should only be done in the same manner in which special city bills under article XII of the State Constitution become laws, namely, such laws should be submitted to the mayors of the cities for approval, and only after a public hearing. It this way the requisite amount of publicity would be given to applications of this character and the local taxpayers would have an opportunity of approving or opposing the proposed measure. There is another manner in which private exemptions sometimes work harm, of which I have an instance in mind. In the upper part of the City of New York, in a residential neighborhood, an institution occupying a private house applied for an exemption from taxation under one of the general laws enumerated and obtained such exemption, which amounted to about $10,000 in assessed valuation. As an indirect cause of the introduction of this institution in the neighborhood every house in the vicinity was depreciated somewhat in value and each of the fifty houses or more in this street received a reduction of $1,000 in value, so that the city not alone lost $10,000 in its assessed valuation but was obliged to reduce property in the same locality to the extent of $50,000. In a somewhat different manner institutions that have received exemption from taxation years ago and have pre-empted certain localities have blocked public improvements and affected valuations. Undoubtedly when these institutions received their exemptions the locality in which they were first established was beyond the direct march of city improvement and in the suburban zone. It has been said that if exemptions came up for renewal from time to time this condition of affairs would not exist.

Exemption by Payment of a Nominal Tax; the "Secured Debt" Tax

Then again we have a class of exemptions from taxation, by the payment of a nominal tax. In 1911 the New York Legislature passed the so-called Secured Debt Law, by which mortgage bonds, debenture bonds, collateral trust bonds, when issued in series of $1,000 or more, shall be exempt from taxation, provided the tax of ½ per cent be paid to the State comptroller. As the average life of bonds and securities of this character is about twenty-five (25) years, it has been estimated that for a fifth of a mill a year this class of securities receives total exemption from taxation.

The act is open to the following criticism: First, the total exemption of any class of property on the payment of a nominal tax is wrong in principle. Secondly, the tax creates a discrimination between mortgage securities and coupon and debenture bonds. The first class pays a tax of ½ per cent based on an average life of five years, and this would make an annual tax of one mill per year, whereas the secured debt law approximates an annual tax of one-fifth of a mill based on a twenty-five (25) year bond. There is a third criticism that may be made and that is where the localities have been deprived of local revenue by the exemption of property from local taxation, the state should divide the revenue from the new form of taxation between itself and the various localities.

It would appear only just that if this law is to be amended it should be by the imposition of an annual rate of a fraction of a mill per year and the same rate should apply to the mortgage tax, the revenue in each case to be divided between the State and the localities. The mortgage tax in almost every case falls on the owner of the property and the State of New York should not endorse or adopt a system of taxation discriminating against the holders of its real estate, which in the long run is the most valuable asset belonging to the State itself. On similar lines, the motor vehicle tax which exempts that class of property from the local tax and which therefore deprives the localities of this revenue, should be divided between the State and the respective cities and towns.

Exemption by Reason of Defective Laws or Inadequate Administrative Machinery

We now come to a class of exemptions which receives its immunity from the fact of inadequate legislative machinery to bring this class within the State's taxing power. Under our statute, "all real property within the State and all personal property situated or owned within the State, is taxable

unless exempt from taxation." The statute then proceeds to define real property, and also proceeds to define personal property. The difficulty lies in the fact that neither statement is sufficiently inclusive, and much that might be the subject of taxation was left out of each class of property. Under these definitions the local tax assessors, for a long time, proceeded to tax all property which was not real property, as personal, whether included within the definition of personal property or not. For instance, for many years the local tax assessors, particularly in the city of New York, sought to tax the franchise of the public service corporation as personal property, and to include the same in the value of the capital stock of the corporation. After long series of litigations, the courts held that this class of property could not be assessed for local taxation under the existing statute. It was undoubtedly due to the law's failure to reach this class of property that the so-called Special Franchise Tax Law was passed in 1899, under which the definition of real property was amended, so as to bring the corporate franchises of public service corporations within the domain of local taxation. Attempts have also been made by the local assessors to include the good will of a corporation in the assessment of its personal property and the court has also there held that this class of property was not included in the definition of personal property. On the other hand, for the purpose of State taxation, good will is part of the capital stock because the tax in this case is not on the property but on the franchise, which includes the good will as well as the tangible property.

In 1899 an attempt was made by the tax department of the City of New York to assess a seat on the New York Stock Exchange as personal property and the Court of Appeals in *People ex rel. Lemmon* v. *Feitner,* 167 N. Y. 1, held that since the definition of personal property did not include a membership or seat in the New York Stock Exchange, notwithstanding the value of such seat was capital invested in business, it could not be taxed against a nonresident as personal property.

There is another class of property that receives its exemption from taxation because the administrative machinery for the assessment or collection of the tax is insufficient. For a long time there was no law or statute by which the tangible property of a nonresident permanently in the State of New York could be taxed, unless it was in the form of capital invested in business, so that for many years, this class of property escaped entirely from taxation and many wealthy nonresidents paid no tax on their paintings, works of art, rare pictures, horses, jewelry, plate and other very valuable personal property, having an actual situs in the tax district.

In 1906 an amendment to the statute was introduced to cover this oversight, and thereby tax the property of a nonresident having an actual situs in the State and not forming a part of his capital invested in business. This is now known as paragraph 2, section 7 of the tax law.

Ever since 1855 there has been a statute on our books by which the property of a non-resident invested in business shall be taxed to the same extent as the property of residents. In 1902 it was held by the Court of Appeals in the *City of New York* v. *McLean,* 170 N. Y. 374, that this tax could not be collected by an action *in personam.* In other words, our remedy must remain one *in rem,* or against the property. Since that time our statute has not been amended to conform to the opinion of the Court of Appeals and the result has been that property of nonresidents, invested in business, pays only a nominal tax because there is no effective remedy for the collection of the tax. In 1901 before the McLean decision, the annual tax collection in the City of New York for nonresidents was about $900,000. In 1913 and for some years prior thereto, it has averaged about $500,000, although population has increased 50 per cent and property of all kinds has correspondingly increased. There is no good reason why the procedure for the collection of this tax should not be amended by statute so as to conform to the opinion of the Court of Appeals and thus bring into the treasury of the State a very important item in our fiscal policy.

The policy in our State is not at all unfriendly to non-residents, as is evidenced by the amendment of our transfer tax law under which only the tangible property of a nonresident

is subject to taxation on the transfer of his estate, while the tangible as well as the intangible property of residents is subject to the transfer tax. I am entirely in accord with this amendment as far as it conforms with equitable principles of interstate comity but the change under the statute has been criticised by many as exempting from taxation the estates of nonresidents permanently invested in business in New York during their life time. It seems to me that a distinction should have been made in the transfer tax law between the property of a nonresident temporarily here, and such property permanently invested here, whether tangible or intangible. The problem of New York with reference to the nonresident is a peculiarly difficult one. There are more wealthy nonresidents in New York State than in all of the other states of the union combined. With us it is not, however, the case of the absentee nonresident, but the case of one domiciled here for the larger part of the year with a permanent residence in Fifth avenue and a place of business in Wall street or in the financial district, and also having one or two places of sojourn in other states, one of which he calls his "voting residence" and the place where he should be taxed. The old maxim that nothing is so sure as death and taxes does not apply, at least as far as taxes are concerned, to the nonresident domiciled in New York. During his life time,— if he cannot evade the tax assessor, he is at least able to escape the tax collector, and on his death, he may cross the Styx to the Elysian fields beyond, happy in the belief that his estate has escaped the transfer tax appraiser, and that if he does not find the golden gates ajar, he will at least find the toll gates wide open.

There is yet another classification that I might make, which is not an exemption in any sense like those already enumerated, but a partial escape of real estate from taxation by reason of inequality of assessment in different parts of the State. Our statute requires real estate to be assessed at its full value. As a matter of fact, real estate is assessed at or near full value in few tax districts of this State, and there is neither pretense nor concealment of this fact. The last report of the State Board of Tax Commissioners shows that from 1896 to 1899, the entire real estate of the State of New York was assessed

at not more than 65 per cent of its value — from 1900 to 1903, at about 68 per cent of its value, from 1904 to 1914 at about 85 per cent, the proportion varying from 50 per cent in some sections of the State to 92 per cent in others. These figures are merely an appropriation and I believe the variance is more nearly from 30 per cent to 100 per cent than from 50 per cent to 92 per cent. There is no central administrative board that may reassess property at its full value on the complaint of a taxpayer, and I know of no enforceable penalty for assessors undervaluing property in their tax districts. There can be no improvement in this respect until we have a State Board of Tax Commissioners with full power to reassess, through its own agents, property in any part of the State, on the complaint of any taxpayer, with full power to reassess on its own initiative, and with power to set aside an entire assessment roll, or the assessment in any tax district, if the same is not made in accordance with the Statute. Such a central tax commission will not only act as a unifying force by harmonizing assessments, but it will promote economy by the nonduplication of efforts, it will create stability and accuracy in assessments, and in addition to all of this, it will act as a check upon erroneous methods of assessment.

Summary and Deductions from Past Experience

Summarizing our experiences on the subject of limitations and exemptions during the past twenty years, and since the last Constitutional Convention, we are perhaps warranted in making the following deductions: As far as limitations are concerned, it is evident that we have been able to construct an entirely new system of indirect taxation without legislative restraint, and with great facility; that under these circumstances, and in the light of the experience of other states less favored by their constitutions, it would be unwise to urge any radical limitations upon the State's administrative control of taxation; that the only direction which our experience has pointed out in which such change might be made, is not for greater limitation, but for more freedom and further

power. To this end, it might be well to recommend a change in the so-called Home Rule provision of our Constitution, article 10, section 2, so that assessors may be appointed as well as elected, if the legislature so directs.

On the subject of exemptions, the largest increasing item in our past experience has been that of city property, and there seems to be no likelihood that there will be any diminution of municipal activity in this respect, and indeed, it is questionable whether it would be advantageous to have it otherwise.

In connection with exemptions of real estate under the general exemption clause, section 4, sub-division 7, it is manifest that what is everybody's business is nobody's business, and that there is little difficulty in securing exemptions from taxation by amendments to this subdivision for any new cult "ism," craft or novel science. That since these exemptions materially affect the sources of local revenue, the same publicity and check which has been a protection to local self-government might be applied to these exemptions, and to that end a constitutional amendment similar to that contained in article 12 of our present constitution applying to city bills, is desirable.

It is undesirable that property be exempt from taxation by the payment of a nominal tax, and it is unfair to the real estate interests of this State that mortgage securities pay a heavier tax than that imposed on railroad bonds. In both cases a very low annual tax is preferable. That whenever property is exempted from local taxation by the payment of a State tax, as in the case of so-called "secured debts" and motor vehicles, the revenue derived should be divided between the State and the localities.

There is no substantial reason why any class of property should be immune from taxation by reason of the Legislature's failure to bring it within the field of assessment, nor should it escape taxation because of a defect in the administrative machinery to provide for its proper assessment or collection. A controlling factor in bringing about proper results with this object in view would be a State Tax Board composed of men expert in the field of economics and the law of taxation,

clothed with adequate powers and provided with a force of efficient assistants protected in their tenure of office by the Civil Service.

To this end Governor Whitman has quite recently pointed the way, and his recommendation for tax administration improvement in the State of New York is a long step in the right direction.

Mr. Wells: I think this conference will agree with me that the papers to which we have just listened are exceedingly interesting, valuable and show a large amount of research and labor on the part of their authors. The subjects contained in these papers will be further discussed by the gentlemen mentioned on the program — The Honorable William H. Sullivan, State Tax Commissioner, Honorable Randall J. LeBoeuf, former Justice of the Supreme Court, and Honorable Danforth E. Ainsworth, counsel New York State Real Estate Association. The first of these speakers is Mr. Sullivan, to whom I have the honor of introducing you.

Commissioner Sullivan: *Mr. Chairman and gentlemen of the convention:* The learned treatment of the constitutional questions contained in the papers just listened to by us leaves a very limited field of discussion, for the subject was so comprehensively and logically presented that it leaves very little for my associates and myself who are to further discuss the questions in these papers.

It has been my observation, however, in my connection with the State Tax Department, that the most serious constitutional question — the one which is more closely related to the question of taxation than any other — is that provision of the Constitution which provides for local self-government, known as the "home rule" clause of the Constitution.

This right is an ancient one. It existed before the Constitution itself, and the early constitutional history of England states that it existed away back in the earliest days of the realm. It was first recognized by certain rights and privileges that were granted by the Crown to the people of various localities of England, and it was a transgression of these rights and of those constitutional prerogatives that were

given by the Crown to the people that brought about the uprisal which resulted in the English people wringing from King John, in the valley of Runnymede, that Magna Charta, which is known in history as the great charter of English liberties. (June 15, 1215.)

The early history of our country shows that those sacred rights were brought to our shores by the early settlers, and that they were carefully guarded and preserved through the organization of the Colonial government as well as after we became a nation after the Revolution.

The home rule provision — the right of self government, was written into our Constitution of 1777 and into the Constitution of 1821, and those of 1846, 1868, and I think that same provision which granted the right to localities to select certain local officers to perform certain functions defined by statute, is written into the Constitution of 1894, in the exact language as was contained in the Constitution of 1846. It would probably be presumptuous for me to spend any time upon this elementary feature in the presence of so many distinguished lawyers, but it is intended solely for the laymen present. The section of the Constitution known as the home rule provision provides that certain localities shall select their officers and that they shall perform certain other functions, which are defined by the statutes of the State; and when a law is enacted that deprives these officers of the right to exercise those functions, it invades their constitutional rights and is invalid.

Now, the courts of the various states of the Union have differed widely upon this subject, and even the courts of our own State have shown remarkable differences of opinion in regard to the construction of this constitutional limitation. One of the early cases in which the Court of Appeals passed upon this question is *People* v. *Draper,* which is reported in 15 New York, page 532, where the statute in question created a police district comprising four counties, and it gave the right to the Governor to appoint police commissioners, who would have control of the police, select them and have entire control of that district. The Court of Appeals held this was constitutional, as those four counties were not a city,

they were not a municipality, and that, therefore, it was not a violation of those constitutional rights. However, there were strong dissenting opinions to the prevailing doctrine established by the court in that case. A little later on, in 1868, came a case reported in 37 New York 428, *People* against *Raymond,* where the statute gave the right to the Governor to appoint a commissioner of taxes for the city of New York, who should exercise the functions theretofore performed by the local commissioner of taxes appointed by the city authorities. That statute was held unconstitutional and in direct violation of the home rule provision of the Constitution.

The most notable case — one that has settled the doctrine of home rule as a constitutional question so far as it relates to special franchises, is *People ex rel. Metropolitan Street Railway Company* against the *State Board of Tax Commissioners,* 174 N. Y. 417. You gentlemen who are assessors and come from various parts of the State might be interested to know just a word as to the history of that contest:

In 1899 the special franchise Tax Law was enacted, which created a new species of real property. It gave the right and imposed the duty upon the State Board of Tax Commissioners of assessing the intangible and the tangible property in the streets and highways owned by public service corporations that occupy the highways and the public streets. This was a new property, that had never before been considered by the local assessors, and the determining of the value and the assessment of this franchise was a new question, and a very difficult one to solve. It brought something like $200,000,000 of property upon the assessment-rolls that never had been before assessed. The owners of the franchises contested vigorously the constitutionality of this law, and many of them brought certiorari proceedings which were consolidated. The referee, ex-Chief Justice Earl, a former Chief Justice of the Court of Appeals, and one of the most distinguished jurists of this State, after a long, careful and exhaustive trial, where large volumes of evidence were taken, and the expressions of the greatest legal minds in this State

were heard — wrote a very learned and comprehensive opinion, in which he held that that statute was constitutional. All through his opinion, if you would read it, you could see the reasoning that this special franchise was new property, and that it did not invade the functions of the local officers, inasmuch as it was in the public highway, in which the whole State had rights, and these properties were for the most part State-wide and operated in various sections of the country, and that it was within the power of the Legislature to pass this law.

The report of Judge Earl came up before Judge Herrick for confirmation at special term, and it was confirmed without serious contention. It went to the Appellate Division, and the case is reported in 79 App. Div. 184. It was argued here at Albany, and the Appellate Division, by a vote of three to two, held that the statute was unconstitutional, with Judge Chester and Judge Walter Lloyd Smith dissenting. The case was taken to the Court of Appeals, and that court, with Judge Vann writing the opinion, unanimously held in accordance with the opinion of Judge Earl — held that the statute was constitutional. They reversed the Appellate Division, and it went to the Supreme Court of the United States, with the result that the act was declared constitutional.

Judge Vann in his opinion states (page 441):

"The legislature also brought in as an incidental part of the system some tangible property which had been previously assessed by local authority. No tangible property, however, was affected, except such as was situated in the public highways and was so incidental to and dependent upon the special franchises as to have no substantial value unless used in connection with them. The relation between intangible rights to run cars in the streets and the tangible property in the rails to run the cars on, is so intimate as to be inseparable in any practicable system of estimating values. Of what value are poles, strung with wires, standing in the street, without a special franchise to use them to carry electricity or send the mysterious message? What are appliances

worth, when made for a special purpose, if they cannot be used for that purpose? What are rails and ties worth, when so fastened to the land in a public highway as to be legally a part of it, without a special franchise to place and use them there as part of a railroad? All the mains and pipes, poles and wires, rails and ties of the relators, when separated from their special franchises, have no value except as firewood or old iron. Their only substantial value is the right to use them in connection with the franchise, and, hence, they are incidental to the franchise. As part of the franchise they are worth something, but severed from it nothing to speak of. Suppose a street railroad company should forfeit its special franchise by a violation of the grant, what would its rails and ties be worth? They would cease to exist as rails and ties, and would become simply so much old material and even the title would vest in the owner of the fee. The expense of grading, placing them in position and paving around them, which is a large part of the original cost, would cease to be an investment and would be property no longer. They are worth virtually nothing except for railroad purposes and a railroad cannot occupy a street without a special franchise. Separate them from the franchise by taking away the street privilege, and they are destroyed. Their only value as rails and ties, as distinguished from so much old wood and iron, is gone. Taking the broad and practical view of the subject, which the legislature had the right to take in creating the new system, they have no assessable value worthy of notice, except through the actual and constant use made of them as incidental to the special franchises. The value of either resides in the union of both and can be practically ascertained only by treating them as a unit. Unless assessed together, both cannot be adequately assessed. A man of judgment, in valuing a wagon and especially estimating its earning capacity, does not pass upon the body, wheels, top and tongue separately. We regard the tangible property as an inseparable part of the special franchises mentioned in the statute, constituting with them a new entity, which as a going concern can neither be assessed nor sold to advantage, except as one thing, single and entire."

Now, gentlemen, you can see how close a question it is, and I might enumerate to you, if the time were longer, many more interesting cases in which courts have widely differed. Judges have had a great variance of opinion as to just what is a correct construction of this constitutional limitation. The principal relates closely to the question of taxation, inasmuch as there are so many schemes and so many plans that are offered that provide for the centralization of the power to tax certain classes of property. Great care should be exercised, that whatever law is enacted does not violate this provision of the Constitution.

I am bringing these matters before you to awaken you to the fact that there are serious constitutional restraints that prevent the enactment into law of what you might think would be a good plan in regard to the assessment of certain classes of property.

I believe this is a very fruitful subject for the coming Constitutional Convention to consider, as to changing the organic law of our State, so if in the future — during the next twenty years, the needs of our State might require a broader exercise of the central power in the assessment of properties it could be accomplished.

One of the most unjust and worst discriminations is in the assessment of railroad property. Railroad properties are State-wide, and in one town you will find the road bed assessed $5,000 a mile, while in another town nearby they have the same road bed on the assessment-roll at $15,000 a mile. Gross inequalities exist, and it is my judgment that those properties should be made to share more equitably and justly their proper burden of taxation, by the appraisal and assessment, by some central body, employing skilled experts who know the cost of reproduction of such properties, and the proper sums to be allowed for depreciation.

The bridges and tunnels and various features of construction of a railroad cannot be assessed wholly in the town where it is located, and must be considered as a part of the whole railway system, and you can readily see the reason — the traffic from the uttermost parts of the State go to and fro across the bridge or through the tunnel, and it must be considered as a part of the whole railway system. It is difficult for a local assessor to know just what elements are to be considered of an entire railway system. They are often unjust to the railroad by excessive assessments, and often unjust to the people of the community by not assessing high enough; but, be that as it may, all the people want, and all the railroads want, is justice. The question of assessing railroads and public service corporations by a central body is a question that will probably be seriously argued and discussed during the next twenty years, and it is a matter that should be considered by our Constitutional Convention — the assessment of public service corporations.

In the assessment of the property of manufacturing corporations there is machinery that often cannot be appraised adequately and justly by a local assessor. It requires knowledge that he cannot acquire, and it is either over-assessed or not assessed at all, or under-assessed, and there must be devised a plan for assessing this property equitably.

And another question: It has been my experience that little villages throughout the State, in their civic pride and the commendable desire to increase the material and industrial growth of their communities, have induced manufacturing industries to locate in their midst, on the promise that they will assess them only nominally, and they do it. If the enterprise is a success it grows until it is worth many hundreds of thousand of dollars — still the nominal assessment remains and the little home-owner observes it. It creates discontent and breeds socialism, anarchy and other elements dangerous to society. If a central body could assess all manufacturing corporations — if it could be permitted by an amendment to the Constitution, it would remedy all of this unjust discrimination, and manufacturing industries would locate where their natural resources demand.

Another proposition is that very often large manufacturing corporations, their owners and their friends and employees, control the political life of these communities, and it is impossible to elect an assessor that will have the courage to discharge his duty as the law requires.

There is another situation that I found in regard to manufacturing corporations: There is a large company which operates several plants in Central New York; they had their principal office at their plant in one of the cities along the Central railroad in the central part of New York State. They were assessed in that city for $400,000 personal property, against which they vigorously protested. Then, when they could not have it reduced by certiorari, they took their shingle down from their principal office in that city, and tacked it over the door of the office of one of their plants situated in a little country town, and their superintendent was elected assessor of that town, and their whole assessment was reduced to $50,000. This is unjust — it is wrong, and it leads me to believe that there is something radically wrong in the assessment of these properties. It must be either regulated by law or by appealing to the conscience of the local tax officers, or in some way — so that this property may be adequately assessed, in justice to the other taxpayers of that community. Other manufacturing industries of that same city, when they found they were assessed somewhere near what their property was worth, built a little shanty in another county and tacked up a shingle over the door announcing that here was their principal office, and only a nominal assessment was made of their extensive properties.

These are conditions which must be seriously considered, and the constititional restraints should be relaxed by the convention which will write a new fundamental law for New York State within the next few months.

Thank you.

Mr. Wells: This important and interesting subject will be still further discussed by the Honorable Randall J. LeBoeuf, former Justice of the Supreme Court, and I have the honor now of presenting the Judge to you.

Judge LeBoeuf: *Mr. Chairman and Gentlemen of the Conference.*—After all you have heard of our Constitution with reference to limitations and exemptions in matters of taxation, one thing we ought to thank God for is that there is nothing in the Constitution which prevented the erection

of this building and this wonderful auditorium. It is a great satisfaction to known there is in the State of New York, for the benefit of the whole people, a building dedicated to such uses, and that we may come here to discuss taxation, a subject on which education is so much required to-day.

I have heard these able papers for the first time this morning, and for that reason it is impossible to adequately discuss them. One thing we have learned, that while discontent is rife in practically all the states of the Union as to their systems of taxation, here in New York our Constitution is evidently free from criticism, with the possible exception of the home rule clause, as that might be construed to limit much needed legislative action.

The real difficulty is not in our Constitution, but in ourselves. The real reason why exemptions from taxation have gone up on the one hand, and the amounts raised by taxation have increased on the other, is because our legislative situation has been complicated by our short-sightedness and extravagance. That is where the trouble is, and we might as well admit it.

In proportion as we have grown wealthy we have grown prodigal. We learned to-day that the Constitution originally put no limitation at all on the power of taxation. Then after the lapse of a great many years there came along some limitation because of what was then considered a tendency to governmental extravagance. How would those generations have characterized the wastefulness of our times? Leaving, however, the organic law and its limitations, we find that one after another statutory exemptions began to be created. These exemptions were created as the result of a distinct legislative policy. Large and respectable bodies of people came to the Legislature — people engaged in religious, philanthropic and fraternal, or some other kind of endeavor, and from time to time satisfied our solons that there was some peculiar reason why they should be exempted from all or some kind of taxation. One by one we took them out of the range of taxation, and gave them large measure of exemption, until now the value of the exempted property in this State runs into figures which are apalling.

When one begins to figure in millions, the imagination soon loses its grasp.

I have made a sort of a computation, however, as I have listened to these two papers, and it seems to me that in the proportion in which the expenditures of the State have increased, the exemptions from taxation have also increased.

This is neither efficiency nor economy.

While we were so cheerfully removing one class of property from taxation, we were as freely increasing our expenditures, and searching for some new form of property which would help us pay the increasing burdens of government.

This was not a political condition, due to the activity of this or that political party, but it has been the steady result of prodigality of expenditure from the smallest hamlet and village in the State, to the State government itself. Instead of taking the business man's view, that we should go over our expenses and see where we could reduce, we took just the opposite view — that we would continue to increase the operating expenses and find some new source of taxing revenue.

An enterprising gentleman — a strenuous gentleman, who then enjoyed a large measure of respect and esteem, found that our special franchises had been long neglected. When a law was worked out taxing them, it was the most wonderful thing yet done.

I speak advisedly, after the lapse of these many years in which courts, municipal corporations and state boards of tax commissioners have been attempting to ascertain what the special franchise tax law means, when I say that few, if any, of them at the start or now, have reached a satisfactory conclusion.

Meantime, however, we have cleared the ground as to general corporate taxation. Corporations were an easy means of making revenue. Enjoying their franchises from the State, they could the more readily be reached than property held by individuals. The tendencies of the time had given rise to little sympathy for corporate complaint. Nor indeed should corporations evade a fair tax, no matter how you work it out. Little thought, however, has been given to fairness

of aggregate results, the whole idea being to free the average citizen (and incidentally voter) from a direct state tax.

For years our sympathy has gone out to the poor gentlemen who sit up nights in the Comptroller's office, endeavoring to ascertain what is the meaning of the last amendment to the corporation tax law, what is the fair chance of the construction which the courts will place upon those laws, and what shall be the result in dollars and cents to the State from these same statutes. The complicated structure built up in a helter skelter desire to procure revenue, sometimes regardless of how it was obtained, was a most difficult thing to deal with in the office of the Comptroller.

The basic trouble in this State to-day is not with the State Tax Commissioners nor the Comptroller.

No matter what criticism there may be properly directed at these departments, there are basic reasons for the chaos in our tax system for which they are not responsible. The fact of the matter is that there have always been and still are in the State Tax Commissioners' and in the Comptroller's offices men of very great intelligence. Some of these men have practically given their lives to the subject of taxation and established a reputation for knowledge and fairness which is State-wide.

Indeed, I do not care whether you are a State Tax Commissioner or a local assessor, you must be everlastingly on the job in order to perform your duties under the present statutes. For years the men in these departments, whether they were Republicans or Democrats, have come in for a large measure of personal criticism which should largely have been directed to the complicated tax statutes of the State.

We are the most recklessly extravagant State in the Union to-day. We want every new governmental fad that any one is willing to suggest. We are everlastingly frothing at the mouth over some new plan that some person with plenty of oratory or influence asserts to us is absolutely good, will make us either quickly rich, or reduce the time, the effort, the danger or the drudgery of labor. The moment such a man comes along he has a ready audience and an enthusiastic reception.

The workingman, on the one hand, is to have better wages and shorter hours, and the capitalist is to get greater efficiency and increased dividends. All you need to do is to pass some statute, create some new theory of economics, enforce the theory at the other fellow's expense and these results will presently follow.

So we have gone on duplicating department after department, one overlapping the other, increasing the number of positions which the demands of patronage fill with obsolescent employees — and the end is not yet. A fair illustration of overlapping is the State Tax Commission and the Public Service Commission. On the one hand you find the Public Service Commission with its inspectors well, or poorly paid, going all over the State of New York in the performance of their duty. If a corporation files its petition in the Public Service Commission to-day for an extension of its railroad lines or the building of a new plant in a dozen tax districts, that Commission will look up pleasantly and tell you that you may file your petition for capitalization, but before you get any new capital, if you have not already been examined, you are going to have a physical examination of your existing properties, as well as your present finances. Then some expert gentlemen, who apparently know their business, go out at the expense of the State, into these taxing districts, and place a valuation upon the very property which the State is later to consider from the standpoint of taxation. Indeed, the time is rapidly coming when no public service corporation, whether it asks for capital or not, will escape such an examination on the part of the Public Service Commission. After that is once made and agreed to, the corporation keeping its reports according to the uniform system of accounts, can have the value of its property from year to year checked and determined in a manner never before capable of being ascertained in this State. All this has cost the State a large amount of money and the expenditure of a great amount of time. It is and will be most valuable to investors and the public. Once done by the State, why not continue to use these valuations with due regard to the difference which may exist between value for capitalization and value for taxation?

Let us turn, however, to the power conferred upon the State Tax Commissioner. He cannot make a complete assessment upon the same property in those several tax districts for all purposes. Yet it is his duty where special franchises exist, to go through practically the same procedure with the experts in his department, and fix a value upon the entire tangible property in those several taxing districts. If it is a railroad, he starts out with an intricate method to ascertain the value of tangible property at crossings, and then he works out the value of the intangible property in the franchise at this crossing. Then again, for other special franchise purposes, he must satisfactorily ascertain the value of the tangible property so far as it exists in the highways. In order, however, to compute a fair return upon the whole physical value of properties to ascertain net earnings to be capitalized as the special franchise, it is absolutely incumbent upon the State Tax Commission to ascertain the value of the whole of the tangible property of that corporation throughout all of these tax districts. After those values are obtained, however, the Commission cannot proceed the step further and determine their value for all assessment purposes in all of the taxing districts upon which it has spent its time and labor at the expense of the State.

So we have first a duplication of part of the work which the Public Service Commission has done, and a failure to fully use for all purposes the results of even this duplication. Then the local assessors duplicate the valuation work which may have been done by the Public Service Commission, has been done by the State Tax Commission and (without the proper facilities, the facts as to the entire system, and one may fairly say, the technical skill), make perhaps a dozen different piecemeal valuations of parts of an entire system, differing from each other in the several districts without rhyme or reason and from which no one profits.

I am not standing for any particular way of doing it, but I do say that legislative means must now be taken to prevent this unwarranted waste of effort and of moneys. If the home rule provision of the Constitution will stop such efforts, it

should be changed. If the constitutionality of such legislation is merely doubted, the Constitution should still be changed so as to give to the legislature the greatest freedom of action in avoiding the duplication of effort and the complications which have grown up from our extravagant methods of taxation,

I have a fad on the subject of corporate taxation. Every one, you know, has a hobby which he is apt to ride to death.

Riding it for a minute I have a notion that when it comes to the question of corporate taxation of many properties, especially the properties of the kind that require expert advice in order to adequately value them, we might get away from most of our troubles, by assessing corporations, not upon their physical property and franchises, but upon some fair basis of gross earnings. I am, however, here advised that I am ahead of the light, or some one suggests, behind it, and that criticism may be justified. The criticism is not justified, however, if it goes so far as asserting that within the next ten years as the result of careful and disinterested inquiry, complete changes will not be required to be made in our system of taxation. That inquiry should be made and that change ought to be forecast now. If the Constitution be not broad enough to permit the Legislature to act when the time comes, then should the Constitution be now adequately amended.

It is easy to criticise the particular individuals who are in office and hold them responsible for the results of our own misdoings. The truth of the matter is, gentlemen, you do not get any worse government in the State of New York than you deserve, no matter what kind of political faith you have, and you know it! If you will stand by and see a half dozen departments organized, some of them to do substantially the same work, you know you must raise the money to pay for it. If you will dance then you must expect to pay the fiddler.

I had the temerity at the National Tax Association meeting in 1913, to make a suggestion on this subject. I do not know that any one became very much excited over it at the time, but I am going to read it to you again to-day.

The Real Problem in Corporate Taxation

This to-day is not, what shall be the subject matter of corporate taxation, nor how the tax once levied shall be collected, but rather, how shall the millions of dollars annually paid by corporations to the State be expended?

I do not find in looking over your proceedings that many papers deal with this subject, and I do not intend to discuss it as a matter of politics, but rather as a matter of government.

An examination of the situation in New York State to-day, in every other state of the Union, and under our National laws, discloses that the slogan of government towards public service corporations, is efficiency.

Efficiency is demanded of the railroads by the Interstate Commerce Commission. Adequate and safe service and efficient management by State commissions. Great men have arisen in the land, whom the solons at Washington submit are able to advise railroad directors and industries of long standing, as to how their properties shall be effectively run, and they enforce this expert opinion by stringent regulation and control.

The demand for efficiency produced the Interstate Commerce Commission and our public service commissions.

The manufacturer who operates his factory without keeping a careful account of cost, is on the high road to bankruptcy. The railroad or other public service corporation which does not carefully investigate duplication and waste in reduction of operating expense, is well on the road toward the junk pile.

Demand from all sides in public service corporations to-day, both from governmental experts and from boards of directors, is not alone to see the gross increase, but to see the red figures— the decrease in the operating expense.

Is it not a fair proposition, that the corporations which pay a great part of the running expenses of a great State's government, should turn to that State and insist on efficiency in the expenditure of that money?

Is it not quite as fair for the taxpayers to require the same degree of efficiency in the employment of those funds, as in

the concerns of corporations themselves which have become now *quasi* public agents?

It is respectfully submitted, that if the effort were made by associations, such as yours, to put the government of your State upon a genuine business basis, the red figures would begin to appear in its operating expenses as they appear upon intelligently managed corporations' balance sheets.

On every side, apart from political and factional criticism, is the charge made, that, with the multiplication of departments, there has come a duplication of reports, accounts and effort, an army of obsolescent employees, involving a great economic waste; that nowhere has there been made even a fair attempt to scheme out the whole government of the State from the standpoint of a great corporation, having many departments, each of which dovetails into the other and makes one effective machine. I use this term not in its present unpopular sense.

It is commonly charged that the State has not received the same treatment as individuals, from contractors in the carrying out of the work on its highways and public works. This is claimed to be due, in large measure, to the lack of skill with which departments themselves are put together, and because of much red tape incident to friction and an overlapping of authority between different departments and officers.

Mark Twain's great beef contract is being re-enacted to-day in our ponderous State machinery, if the public prints are to be believed.

Special commissions are appointed to revise the laws affecting banking, insurance, highways and other departments of State activity. These commissions, however, look only to the economic and legal questions affecting their own departments, and there can be but little progress made through them beyond the matters to them submitted. Many of the departments themselves are making serious efforts to effect a change, but these cannot go beyond their own jurisdiction, and, it is hardly to be expected that they would, willingly, give up even overlapping authority, if they could.

The desired efficiency cannot be obtained by legislatures having constant demand made upon them to produce changes

in the statute law, nor from executives having need now, almost the year around, to observe the movements of legislatures, in the change of laws, and the duty of enforcing them.

It is respectfully submitted that it could in some measure be obtained, in New York State, from the periodic appointment of a *non-partisan efficiency council* of experts in governmental affairs. Such a body would attract the best brains of the country and would probably be willing to serve without compensation. It would ascertain the needs and the cost of operating the various activities of the State, uncover duplication and overlapping of effort and powers, examine into the sources of the revenue of the State, and the propriety of revision of such sources of revenue, expose the swarm of employees unnecessarily employed because of the demands of patronage, and suggest to the Legislature, to which its report would be made, a re-adjustment of the State's affairs, and a genuine business system brought up to the standards of efficiency now demanded of great enterprises. It may be fairly asserted that the recommendation of such a commission enacted into law, would radically reduce the rate of taxation in this State.

There never was a more opportune time to make such a demand.

Public servants are now clamoring for a high moral plane in public action, and the taxpayer may, in this atmosphere, hope to have fair consideration of a demand, not for ethical, but efficient, government.

If taxpayers do not require such efficiency in the use of their money, we need not be surprised that, in the constant shifting of political responsibility, extravagance, sloth and waste will be fairly chargeable to their laxity and indifference.

MR. WELLS: Judge LeBoeuf's discussion of this subject was to have been followed by an address by a gentleman who is distinguished at the bar, as a legislator and interested in the development of the State, and I understand is counsel for a new body of people, who are seeking to aid the men of

this State in solving the difficult questions we have under consideration. It would have given me great pleasure to introduce to you Mr. Danforth E. Ainsworth, counsel for the New York State Real Estate Association, but I am informed that Mr. Ainsworth is detained as counsel in an important murder trial, and that we shall be deprived of the pleasure of listening to him.

What is the further pleasure of the conference? It has been suggested that this subject be thrown open for discussion, and we will be glad to listen to any gentleman who will speak on this subject.

MR. HICKMAN (of Buffalo): In discussing constitutional questions, both Mr. Moot and Mr. Powell talked at some length on exemptions. I would like to call attention to the exemption contained in subdivision 7, section 4 of the tax law, in favor of real property owned by fraternal organizations, the net proceeds of which property are devoted to the maintenance of a home. This part of subdivision 7 reads as follows:

"The real property of any fraternal corporation, association or body created to build and maintain a building or buildings for its meeting or meetings of the general assembly of its members, or subordinate bodies of such fraternity, and for the accommodation of other fraternal bodies or associations, the entire net income of which real property is exclusively applied or to be used to build, furnish and maintain an asylum or asylums, a home or homes, a school or schools, for the free education or relief of the members of said fraternity, or for the relief, support and care of worthy and indigent members of the fraterity, their wives, widows or orphans, shall be exempt from taxation."

Under this exemption, fraternal organizations enjoy something that is denied to any other corporation or individual in the State. Real property owned by a church or a hospital, for instance, which is not exclusively used for church or hospital purposes, or which is leased to another, is not exempt, even though the receipts from such a property are devoted

to the charitable purposes of the church or the hospital. If the property of a church or hospital is partially devoted by the church or hospital to its own corporate uses, it is exempt only to the extent to which it is so used, although the proceeds from the balance of the property are still devoted to the charitable purposes of the owner. But under this amendment to subdivision 7, property owned by a fraternal organization is exempt from taxation, even though it is leased by the fraternity for business uses, if the net income from the property is devoted to the maintenance of a home. It seems apparent that under this provision any amount of valuable business property in our great cities could be owned by such a fraternal corporation and leased by it for profit, and it would be entirely exempt from taxation, if the net income were devoted to the maintenance of a home for the benefit of the members of the fraternity. Recently a decision has been made by Justice Morschauser, of the Supreme Court, in the case of *People ex rel. Poughkeepsie Lodge* v. *Nevins et al.*, constituting the Board of Review of Assessments of the city of Poughkeepsie, holding that this exemption applies to the real property of any fraternal corporation, whether or not it maintains an asylum, home or school, if the net income of the property owned is used for the "relief, support and care of worthy and indigent members of the fraternity," etc. My construction of the provision involved has been that the words "for the relief, support and care of worthy and indigent members of the fraternity, their wives, widows or orphans," referred solely to the words "asylum or asylums, a home or homes, a school or schools," and that no property of the fraternity would be exempt unless its net income was devoted to the maintaince of such an asylum, home or school. The effect of this decision, if sustained, will probably be to exempt from taxation all real property owned by a fraternal organization, whether used directly by the organization or leased by it to others for profit. Any attempt to tax business property owned by such a corporation and leased for profit, could under this decision be met by the claim that the net income of the property sought to be taxed was devoted to

" the relief, support and care of worthy and indigent members of the fraternity." The exemption was too broad by far before this decision, but if this decision is to stand, it seems to me that all the evils which formerly arose from the holding by the church of real property not used for church purposes but leased by it for profit, would again be rendered possible through the ownership of real property by fraternal corporations.

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